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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,635	09/12/2005	Hans-Ulrich Hummel	VSKW-02(074060-00003)	9433
27805	7590	12/24/2008		
THOMPSON HINE L.L.P. Intellectual Property Group P.O. BOX 8801 DAYTON, OH 45401-8801			EXAMINER WATKINS III, WILLIAM P	
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			12/24/2008 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/532,635

Applicant(s)

HUMMEL ET AL.

Examiner

William P. Watkins III

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-15, 17-23, 25-27 and 29-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-15, 17-23, 25-27 and 29-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☒ Other: See Continuation Sheet

Continuation of Attachment(s) 6). Other: PTO Translation 08-6613 of JP-09125538-A.

DETAILED ACTION

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11-15, 17-23, 25-27 and 29-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over (Kiyomitsu (JP-A 2001-059281, English abstract and PTO translation 08-3999) in view of Purnell (U.S. 6,190,440 B1).

Kiyomitsu teaches forming a wallboard of zeolite and gypsum with the zeolite being 10% to 40% by weight (section 007 of the PTO translation). The zeolite is used to absorb odors (English abstract). Kiyomitsu does not specify a specific type of zeolite. Purnell teaches using either natural zeolite or synthetic zeolite for odor absorption (col. 2, lines 25-30). The instant invention claims a wall board made of gypsum with natural zeolite for odor absorption. It would have been obvious to one of ordinary skill in the art to have used natural zeolite in the wall board of Kiyomitsu as Purnell teaches either natural or synthetic zeolite for odor absorption.

3. Applicant's arguments filed 17 September 2008 and 30 June 2008 have been fully considered but they are not persuasive.

The examiner has reviewed applicant's arguments in the amendment filed 30 June 2008 as well as the declaration filed 17 September 2008. In general it would appear that Kiyomitsu '281 clearly teaches the use of zeolite in drywall board for purposes of odor control either with or without diatomaceous earth. The prior art description in section 0002 of the translation refers to the use of zeolite alone. PTO translation 08-6613 of the prior art document mentioned in section 0002 of the reference is attached to the instant office action. It clearly teaches use of zeolite alone, as do several of the examples in the Kiyomitsu '281. Thus little weight is given applicant's limitation of less than 3% diatomaceous earth. Kiyomitsu '281 does not clearly identify any specific type of zeolite, but it clearly would have been obvious to use a natural zeolite in view of the teachings of Purnell. Applicant has presented data and argument that natural zeolite gives unexpected results when used in drywall that is not subject to the temperatures needed to calcine and activate zeolite. The data clearly shows a difference between the synthetic Zeolite A and the natural Clinoptilolite. It is unclear however if this result will extend to other types of natural zeolite, and be repeated with Clinoptilolite and other synthetic zeolites. Applicant has not established what the expected result is with synthetic zeolites in general, nor that any potential unexpected results extend beyond Clinoptilolite. The evidence of unexpected results being unpersuasive or at best not commensurate in scope with the independent claim, the rejection is maintained.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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WW/ww

December 25, 2008

/William P. Watkins III/

Primary Examiner, Art Unit 1794